



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 29 1999

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James R. Hernandez, President
James R. Hernandez Co., Inc.
531 Shelly street
Alton, Illinois 62002

Dear Mr. Hernandez:

Enclosed is an executed original of the Consent Agreement and Consent Order (CACO). The CACO was filed with the Regional Hearing Clerk on 4/30/99. Payment instructions are located in paragraph thirteen (13) of the CACO. Initial payment is due thirty (30) days after the filing date. Your check should display the case docket number (5-CAA-99-008) and the billing document number BD # 050399022.

If you have any questions please contact myself, at (312) 886-6812, or Linda Hamsing at (312) 886-6810.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Brent Marable", followed by a small flourish.

Brent Marable, Chief
Air Enforcement and Compliance Assurance section (IL/IN)

Enclosure

RECEIVED
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'99 APR 30 P3:23

IN THE MATTER OF)	Docket No. 5-CAA-99-008
)	
James R. Hernandez)	Proceeding to Assess
Construction Co., Inc.;)	Administrative Penalties
531 Shelly Street)	under Section 113(d) of the
Alton, IL 62002)	Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), instituted this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules"), 40 C.F.R. Part 22, by issuing and filing an Administrative Complaint (Complaint) against Respondent, James R. Hernandez Construction Co., Inc. (Respondent or Hernandez).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Complainant alleged that Respondent committed the following violations of Section 112 of the CAA and the National

Emission Standard for Hazardous Air Pollutants for asbestos

(asbestos NESHAP), 40 C.F.R. Part 61, Subpart M:

Hernandez failed to provide U.S. EPA or the IEPA with a written notice of intention to demolish the Norfolk and Western Railway's Alton Federal Yard Office facility in Alton, Illinois, in violation of 40 C.F.R. § 61.145(b)(1) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A);

Hernandez's failure to remove all RACM from the Alton Federal Yard Office building in Alton, Illinois, prior to demolishing the building is in violation of 40 C.F.R. § 61.145(c)(1) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A);

Hernandez's failure to adequately wet all RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal, during the Alton Federal Yard Office building demolition, is in violation of 40 C.F.R. § 61.145(c)(6)(i) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A);

Hernandez's failure to carefully lower RACM to the ground during the Alton Federal Yard Office demolition, is in violation of 40 C.F.R. § 61.145(c)(6)(ii) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A);

Hernandez's failure to thoroughly inspect the Alton residential installation facility prior to the commencement of the demolition for the presence of RACM constitutes a violation of 40 C.F.R. § 61.145(a) and of Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A); and

For the demolition of a residential installation owned by the City of Alton, Illinois, in December of 1996, Hernandez failed to provide a complete written notice of intention to demolish. Specifically, the notice failed to contain: a complete description of the facility being demolished, including size in square meters or square feet; the procedure, including analytical method, employed to detect the presence of RACM; the starting date of demolition; and the procedures to be followed in the event that unexpected

RACM was found. The above described failures constitute violations of 40 C.F.R. § 61.145(b)(4)(iv), 40 C.F.R. § 61.145(b)(4)(v), 40 C.F.R. § 61.145(b)(4)(ix), 40 C.F.R. § 61.145(b)(4)(xvi) and Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A).

4. The Complainant and Respondent have determined that this matter should be settled without a hearing or further proceedings, upon the terms set forth in this Consent Agreement and Final Order.

WHEREFORE, for the purpose of this proceeding only, and without prejudice to any other proceeding:

5. Respondent admits that it is an Illinois Corporation whose registered agent is James R. Hernandez, 531 Shelly Street, Alton, IL, 62002.

6. Respondent admits to the jurisdictional allegations contained in the Complaint.

7. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

8. Respondent explicitly waives its right to an administrative or judicial hearing on any issue of law or fact set forth in the Complaint or in this Consent Agreement and Final Order.

9. Respondent states that, to the best of its knowledge, it is in full compliance with the asbestos NESHAP.

10. Complainant and Respondent consent to the terms of the Consent Agreement set forth below.

11. This Consent Agreement and Final Order shall become effective on the date it is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

CONSENT AGREEMENT

12. Respondent shall comply with all of the applicable requirements of the asbestos NESHAP.

13. Within thirty (30) days following the effective date of this Consent Agreement and Final Order, the Respondent shall pay a civil penalty in the amount of three thousand dollars (\$3,000) for the CAA violations alleged in the Complaint. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of the Administrative Complaint to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

14. Copies of the transmittal letter accompanying the payment should also be sent to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd. (E-19J)
Chicago, Illinois 60604-3590

and

Linda L. Hamsing
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard (AE-17J)
Chicago, Illinois 60604-3590

15. Respondent's failure to comply with any provision of this Consent Agreement and Final Order may subject it to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the civil penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 16 below. In any such collection action, the validity, amount, and appropriateness of this Order or the penalty assessed hereunder are not subject to review.

16. Interest shall accrue on any amounts overdue under the terms of this Consent Agreement and Final Order at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be imposed if payment is not made within 30 days after the Complainant files a fully executed copy of this Consent Agreement and Final Order with the Regional Hearing Clerk.

17. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other Federal, State and local laws and statutes.

18. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, successors or assigns.

19. Each undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms of this Consent Agreement and to bind that party to such terms.

20. The parties to this agreement consent to the entry of this Consent Agreement and Final Order without further notice.

21. Each party shall bear its own costs, fees and disbursements in this action.

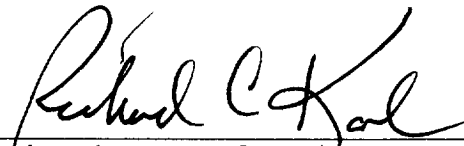
22. The parties agree to issuance of the accompanying Final Order.

23. Upon payment of the penalty provided for in this Consent Agreement, this Consent Agreement and Final Order shall be in complete and full settlement and release of any and all civil claims with respect to all violations alleged in the Complaint.

**U.S. Environmental Protection
Agency, Complainant**

Date: 4-28-99

By:

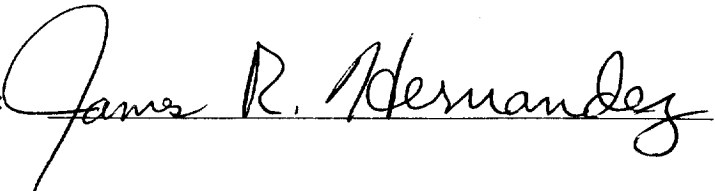


Richard C. Karl, Director
Air and Radiation Division
U.S. EPA, Region 5 (A-18J)
77 West Jackson Blvd.
Chicago, Illinois 60604

**James R. Hernandez Construction
Co., Inc., Respondent**

Date: 4-20-99

By:



In the Matter of:
James R. Hernandez Construction Co., Inc.
531 Shelly Street
Alton, IL 62002
Docket No.

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The James R. Hernandez Construction Co., Inc. is hereby **ORDERED** to comply with all of the terms of the Consent Agreement.

Date: April 24, 1999

By: _____

David A. Ullrich
DAVID A. ULLRICH
Acting Regional Administrator

standard bcc's: official file copy w/attachment(s)
 originator's copy w/attachment(s)
 originating organization file w/attachment(s)

other bcc's: William Clune(C-14J)
 Lucille Penson

5ARD:EB:ES (IL/IN) f:cover.her

Docket No: 5-CAA-5-99-008

RECEIVED
REGIONAL HEARING

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Consent Order (CACO), was sent to James R. Hernandez Construction Co., Inc., was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CACO was sent Certified Mail, Return Receipt Requested, to:

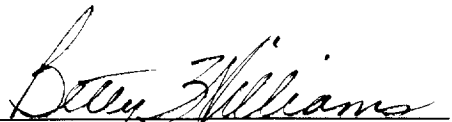
James R. Hernandez, President and
Registered Agent for
James R. Hernandez Co., Inc.
531 Shelly Street
Alton, Illinois 62002

I also certify that copies of the CACO were sent by First Class Mail to:

Phillip H. Hamilton
Farrell, Hunter, Hamilton & Julian, P.C.
1310 D'Adrian Professional Park
Godfrey, IL 62035-1688

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of air
Illinois Environmental Protection agency
1021 North Grand Avenue East
Springfield, Illinois 62702

on the 30th Day of April 1999.


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER:

P140779140